

Islamic Legal Communication In The Determination Of Wali Adhal: A Comparative Study Of Indonesia And Morocco

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Abstract

This study analyzes how Islamic legal communication is applied in the determination of wali adhal in Indonesia and Morocco using a comparative case study approach. The goal is to understand the implementation of maqasid al-sharia in both legal systems, especially regarding women's rights in marriage. Data was collected through case analysis, official documents, and interviews with religious court judges. The results show that Indonesia resolves the case of guardian rejection through the appointment of a guardian judge, which illustrates a reactive yet adaptive ijtihad-based legal response. In contrast, Morocco adopted structural legislative reforms by granting adult women the right to marry without guardianship, rooted in a maqasid-oriented reinterpretation of family law. This contrast shows two models of Islamic law reform: Indonesia's case-based judicial policy and Morocco's proactive law. This study contributes to Islamic legal theory by integrating maqasid al-sharia and legal communication to explain how state institutions mediate and transmit Islamic legal values in contemporary family law.

Keywords: *Islamic legal communication; Wali adhal; Maqasid al-shari'ah; Women's rights; Comparative family law.*

Introduction

The concept of wali adhal, a guardian who unjustifiably refuses to give consent to a woman's marriage, presents both a legal and ethical dilemma within Islamic family law (Maisarah, 2016). Such cases disrupt not only the marriage process but also highlight ongoing tensions between classical fiqh rulings and contemporary demands for gender equity and legal justice. In many Muslim societies, the presence and role of a marriage guardian (Marriage Guardian) remain fundamental. However, when this authority is misused, it creates significant obstacles for women to exercise their marital rights, potentially violating broader Islamic objectives aimed at preserving dignity (*hifz al-'ird*), lineage (*hifz al-nasl*), and well-being (*hifz al-nafs*) (Alfarisi et al., 2023).

From the jurisprudential perspective, the four major Sunni schools exhibit divergent views regarding the necessity of a wali in marriage. The Hanafi school, known for its individualistic orientation, permits an adult and rational woman to enter into marriage without a guardian. In contrast, the Shafi'i, Maliki, and Hanbali schools uphold that the guardian's presence is obligatory for the marriage to be valid (Awaliya, 2020). This divergence reflects deeper hermeneutical and epistemological orientations in Islamic legal theory, particularly concerning gender roles, authority structures, and the balance between autonomy and family cohesion.

Indonesia and Morocco represent two Muslim-majority countries that have responded differently to the problem of wali adhal shaped by their respective legal systems, social movements, and interpretive traditions. In Indonesia, the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), influenced predominantly by the Shafi'i school, maintains the legal requirement of a wali in marriage (S. Gunawan et al., 2022). However, the state provides a judicial remedy through the appointment of a wali hakim (judicial guardian) in cases where the biological wali refuses without valid Islamic justification, such as in Decision No. 1044/Pdt.P/2021/PA.Kab.MLG (Fatimah, 2021). In that case, the rejection was based on weton (Javanese calendrical belief), which the court ruled as invalid from a sharia perspective (Aliyuddiin et al., 2022).

Morocco, on the other hand, has undergone a comprehensive legislative transformation through the enactment of the *Mudawwanah al-Usrah* in 2004. This reform, driven by internal pressures and international human rights discourses, significantly reduced the authority of the wali by allowing adult women to contract their own marriages without guardian consent (Anello, 2014). Although the Maliki school traditionally mandates a guardian's presence, Moroccan jurists and lawmakers employed the framework of maqasid al-shari'ah to justify this reform as

aligned with Islamic objectives of justice, dignity, and public interest (Musawah, 2024)

Despite the growing academic attention toward Islamic family law reform, there remains a scarcity of comparative legal studies that critically analyze the different approaches to wali adhal across jurisdictions using a maqasid-based evaluative lens (Fadilah, 2024). Moreover, many studies have approached the issue from a normative-theological or purely legalistic standpoint without examining the socio-institutional mechanisms through which Islamic legal values are interpreted and transmitted by the state (Fauziah, 2018). In this regard, the concept of Islamic legal communication becomes crucial, as it frames law not merely as a static set of rules but as a dynamic process of meaning-making mediated through institutions such as courts, ministries, and public discourse.

This research seeks to address that gap by comparing the institutional handling of wali adhal in Indonesia and Morocco through the dual frameworks of maqasid al-shari'ah and Islamic legal communication theory. The Indonesian model represents a reactive yet adaptive judicial solution to guardian obstruction, while the Moroccan model exemplifies a proactive legislative reform rooted in maqasid values. Both cases offer valuable insights into how Islamic legal norms are operationalized within modern state structures and how maqasid can serve as both a moral compass and a legal strategy for family law reform.

Central to this study is the theoretical contribution of Jasser Auda, who critiques classical maqasid as overly rigid and hierarchical, proposing instead a systems-oriented, multi-dimensional approach. Auda's six dimensions, purpose, system, time, cognition, value, and network, allow for a contextual and integrated application of maqasid that better accommodates the complexities of modern societies (Auda, 2008). Applying this framework to wali adhal reveals not only the legal mechanisms involved but also how Islamic values of justice and welfare are structurally embedded or challenged within institutional frameworks.

In addition, this research contributes methodologically by integrating qualitative legal analysis with comparative case studies and empirical data (such as judicial interviews and statutory analysis). This approach allows the researcher to capture both the textual and contextual dimensions of Islamic law, exploring how norms are contested, reformulated, and communicated within different political and cultural environments.

Ultimately, the aim of this study is to demonstrate that Islamic law, far from being static or patriarchal by nature, possesses within it the tools for ethical transformation and gender justice. Through maqasid and effective legal communication state institutions in Muslim countries can bridge the

gap between classical fiqh and contemporary human rights imperatives. The contrast between Indonesia's case-by-case judicial discretion and Morocco's systemic legislative reform offers a rich comparative field to evaluate the role of Islamic law in promoting justice, especially in matters directly affecting women's autonomy and marital rights.

Research Methods

This study adopts a qualitative-comparative case study approach to explore the application of Islamic legal communication and *maqasid al-shari'ah* in addressing the issue of *wali adhal* in Indonesia and Morocco. The qualitative method was chosen because it allows for an in-depth interpretation of legal meaning, normative values, and institutional practices within distinct socio-legal contexts (Arikunto, 2017). Rather than testing hypotheses, this research seeks to understand how and why legal systems respond to the problem of *wali adhal* in specific ways, and how such responses are shaped by interpretive frameworks such as *maqasid* and legal communication. The research aligns with a constructivist-interpretive paradigm that sees law not merely as a body of rules, but as a social discourse shaped by religious authority, legal culture, and political institutions.

Two legal contexts were purposively selected for comparison: Indonesia, represented by the case of Decision No. 1044/Pdt.P/2021/PA.Kab.Mlg issued by the Malang Regency Religious Court, and Morocco represented by statutory provisions of Articles 24 and 25 of the 2004 *Mudawwanah al-Usrah*. The Indonesian case was selected due to its direct engagement with a *wali adhal* situation where the father refused to consent to the marriage based on *weton* (Javanese calendrical compatibility), prompting the court to appoint a *wali hakim*. This case illustrates the interplay between Islamic law, local custom, and judicial discretion. Conversely, the Moroccan model reflects a structural legal reform whereby adult women are granted the right to marry without a guardian based on a reinterpretation of Islamic family law through the lens of *maqasid al-shari'ah* (Anello, 2014). This contrast offers a critical point of comparison between judicial intervention and legislative transformation.

Data were collected from three main sources: primary legal materials (court decisions, statutes, family codes), secondary literature (books, journals, institutional reports), and semi-structured interviews. The interviews were conducted with one of the Indonesian judges who has handled *wali adhal* cases. Hakim dipilih using purposive sampling based on their experience, familiarity with Islamic family law, and institutional

role in religious courts. Interview questions focused on the reasoning behind the use of wali hakim, the role of maqasid in legal interpretation, and perceived challenges faced by women in navigating the legal process.

Unfortunately, due to access limitations, direct interviews with Moroccan legal actors could not be conducted. Therefore, Moroccan data was gathered through document analysis of legal texts, reform reports, academic commentaries, and policy papers. Despite this asymmetry, efforts were made to ensure analytical balance by relying on multiple sources and comparative framing. All interviews were conducted with informed consent, and anonymity was maintained throughout the research process.

Data were analyzed thematically using both legal and interpretive frameworks. The maqasid al-shari'ah framework is based on classical formulations from (Al-Syathibi, 2005) and the modern expansion proposed by (Auda, 2008). It was used to assess how the legal practices in each country reflect Islamic objectives such as *hifz al-din* (religion), *hifz al-nafs* (life), *hifz al-'aql* (intellect), *hifz al-nasl* (lineage), and *hifz al-mal* (wealth). Auda's systems-oriented maqasid model, consisting of six dimensions: purpose, system, cognition, values, time, and networks, provides a flexible and contextual reading of Islamic law, particularly in addressing contemporary issues of gender justice and legal reform.

In parallel, the theory of Islamic legal communication is used to evaluate how legal norms are transmitted, legitimized, and contested within institutional and social discourses. This approach shifts the analysis from law as a static code to law as a medium of communication between the state, religious authority, and society. In both Indonesia and Morocco, state institutions play an active role in interpreting and communicating Islamic legal values through mechanisms such as court rulings, legislation, and public discourse.

Thematic coding was used to identify recurring patterns related to maqasid-based reasoning, legal messaging, institutional roles, and barriers to access. A comparative matrix was developed to map the institutional and discursive strategies employed in both countries. Ethical considerations were central to the research, including voluntary participation in interviews, proper citation of sources, and reflexivity in interpretation.

While the Indonesian case benefits from richer field data, the Moroccan side is supported by a substantial body of literature and policy documentation. This methodological blend allows for a nuanced analysis that considers both the normative structure and communicative function of Islamic legal systems in contemporary family law. In conclusion, by

integrating doctrinal analysis, empirical interviews, and comparative theory, this study offers a comprehensive framework for understanding the dynamics of wali adhal cases as a site of Islamic legal adaptation and transformation.

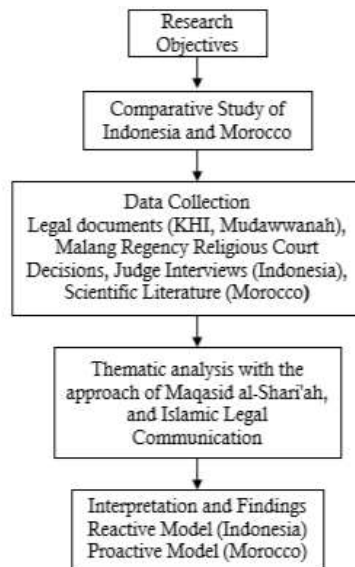


Figure 1. Comparative Qualitative Research Design of Wali Adhal in Indonesia and Morocco

Results and Discussion

The Practice of Determining Wali Adhal in Indonesia: A Legal and Maqasid-Based Analysis

The legal handling of wali adhal in Indonesia reflects an adaptive model of Islamic family law that combines classical jurisprudence with state-based judicial mechanisms. Indonesia's system is rooted in the Shafi'i tradition, which mandates the presence of a guardian (wali) for a valid marriage but provides legal remedies through the authority of religious courts. This section analyzes how the Indonesian legal framework, particularly through the Compilation of Islamic Law (KHI), actualizes maqasid al-shari'ah in addressing guardianship disputes using the Malang Regency case as a reference point and extending the analysis to similar cases in other regions (Amin et al., 2023).

Indonesia codified its Islamic family law system progressively through Law No. 1 of 1974 concerning Marriage, Law No. 7 of 1989 concerning Religious Courts (revised in 2006), and the issuance of the KHI through

Presidential Instruction No. 1 of 1991 (Ridwan, 2017). Article 23 of the KHI regulates the conditions under which a wali hakim may be appointed, namely if the guardian of lineage does not exist, is unknown, is unreachable, or refuses to give consent without a valid Islamic reason (KHI, 1991). This legal formulation is further supported by the Supreme Court Decree KMA/032/SK/IV/2006 and the procedural rules in PMA No. 2 of 1987, which place the decision in the hands of the Religious Court (Badrudin & Supriyadi, 2022).

A notable case that demonstrates the practical implementation of this regulation is Decision No. 1044/Pdt.P/2021/PA.Kab.Mlg. In this case, the biological father refused to permit his daughter's marriage due to concerns about weton compatibility, a Javanese astrological tradition often used to assess marital harmony. The court found this justification to be religiously unfounded, as weton has no basis in Islamic sources and therefore cannot be used to obstruct marriage. (Wahid et al., 2021). The judge applying both textual reasoning and maqasid considerations decided to appoint a wali hakim in place of the father, thus upholding the woman's right to marriage and protecting her dignity (*hifz al-'ird*) and lineage (*hifz al-nasl*) (Agung, 2021).

The religious court's reasoning reflects the application of *ijtihad qadha'i* (judicial *ijtihad*) rooted in the principles of public interest (*maslahah*), especially in safeguarding fundamental rights guaranteed under sharia. This action also embodies a functional application of *jalb al-masalih* (bringing benefit) and *dar' al-mafasid* (preventing harm), two core objectives in the maqasid framework. It shows how maqasid serves not only as an ethical guide but as an operational legal principle within Indonesia's Islamic judiciary.

Further investigation into similar cases across Indonesia reveals a consistent pattern. In cases from Demak, Bandung, and Makassar courts have repeatedly replaced obstructive guardians with wali hakim based on similar reasoning (Agung, 2025). These decisions demonstrate that while the system is reactive, triggered by a petition from the woman, it nevertheless provides a mechanism of institutional correction when patriarchal authority is abused (Ulum & Wahid, 2021). However, scholars and gender advocates argue that requiring women to initiate court proceedings places a disproportionate burden on them, particularly in rural areas where access to legal aid is limited (Pramesi, 2021).

From the perspective of Islamic legal communication, the role of the court in such cases is not merely juridical but communicative. The court's decision sends a message to society about the boundaries of religious authority, the rights of women, and the state's role in safeguarding those

rights. The court functions as an interpreter and transmitter of Islamic values to the public, shaping legal consciousness and gradually altering cultural perceptions (Gunawan, 2024). This is particularly relevant in regions where local customs like *weton*, arranged marriage, or tribal codes continue to influence matrimonial decisions in contradiction to Islamic legal ethics.

When analyzed through the lens of Jasser Auda's six-dimensional *maqasid* framework, the handling of *wali adhal* in Indonesia aligns with several dimensions. The purpose dimension (*ghayah*) is evident in the court's objective to protect the marriage institution and the rights of women. The system dimension recognizes the interconnected roles of religious courts, national law, and social norms (Irfan, 2013). The time dimension is reflected in the court's contextual interpretation of classical *fiqh* in response to contemporary realities. The cognitive dimension involves judicial awareness of the social harm caused by obstructive guardianship. The value dimension includes the principles of justice, dignity, and legal certainty, while the network dimension considers the relational dynamics between courts, families, religious leaders, and the state (Gumati, 2018)

Despite these strengths, Indonesia's model is not without critique. Firstly, the model is case-based and fragmented, depending heavily on judicial discretion. This opens space for inconsistency across regions. (Dieste, 2009). Some judges may be more progressive in interpreting *wali adhal*, while others may adhere strictly to textualist interpretations or even defer to local customs. Secondly, the process is reactive, meaning women must bear the burden of seeking justice through litigation (Chalabi, 2021). This can be psychologically, financially, and socially burdensome, especially in conservative communities where challenging patriarchal authority may invite stigma.

Moreover, while Indonesia's legal provisions are clearly *maqasid*-aligned, there is often a lack of public legal literacy about these rights. Many women are unaware that they can petition the court in cases of *wali adhal*, and even fewer know how to initiate such proceedings. The role of legal aid institutions, community organizations, and religious leaders is thus crucial in bridging the gap between textual rights and lived realities (Nawir et al., 2024).

In this context, Islamic legal communication should not be limited to court decisions but should extend to preemptive social engagement. This includes public fatwas, religious education, and digital campaigns that emphasize the *maqasid* behind marriage law and debunk cultural practices that hinder sharia objectives (Juliandi et al., 2018). A dynamic and

dialogical model of legal communication, rather than a top-down one, can help shift public perception and prevent cases of wali adhal before they escalate to the courtroom (Huda & Meidina, 2023).

In conclusion, the Indonesian experience with wali adhal showcases a hybrid model of Islamic legal reform, one that maintains doctrinal continuity with the Shafi'i tradition while integrating institutional mechanisms for justice and gender equity. Through religious court interventions, the system allows for the substitution of the guardian when his authority becomes obstructive rather than protective. The use of maqasid as both legal reasoning and moral compass reinforces the legitimacy of judicial discretion in resolving such cases. Nevertheless, to strengthen this system, further efforts are needed in standardizing judicial interpretations, expanding legal access for women, and enhancing public communication of Islamic legal values. Only then can the maqasid vision of marriage as a contract of justice, protection, and dignity be fully realized in the lived experiences of Muslim women in Indonesia.

The Legal System of Guardianship in Marriage in Morocco: Maqasid and Legislative Reform

Morocco is one of the countries in the North African Maghreb region where the majority of the population is Muslim and implements a legal system based on the duality between Islamic law and modern positive law (Chtatou, 2025). As a country with a long history in the development of Maliki fiqh, Morocco has a strong tradition of Islamic law. However, along with the social dynamics and demands of the times, Morocco has carried out various significant legal reforms, especially in the field of family law (Nurhidayah, 2024).

The reform of Morocco's family law system represents one of the most significant modern efforts to align Islamic legal principles with contemporary human rights standards. Unlike Indonesia's reactive judicial approach to wali adhal, Morocco embarked on a structural reform by revising its Mudawwanah al-Usrah in 2004. This reform aimed to institutionalize the principles of justice, equality, and dignity as rooted in maqasid al-shari'ah, and was accomplished without abandoning Islamic legal authority. This section explores how Morocco restructured its guardianship system in marriage by integrating maqasid into its legislative process, drawing heavily from both classical Maliki jurisprudence and contemporary maqasid methodology, particularly the systems-oriented vision proposed by Jasser Auda.

Historically, Morocco adhered strictly to the Maliki school, which maintained that a guardian's consent was a condition for the validity of a

woman's marriage. This position placed women regardless of age or competence under the legal control of male guardians (*wali*), often leading to constraints on their marital choices. The pre-2004 *Mudawwanah al-Ahwal al-Syakhsiyyah* reflected this patriarchal stance, treating women as legal minors in matters of marriage and family. Such a framework not only contradicted contemporary notions of gender equality but also contributed to the rise of forced marriages and violations of personal autonomy (Mahfudhi, 2022).

The reform of the *Mudawwanah* in 2004 marked a paradigm shift. Spearheaded by King Muhammad VI and supported by feminist movements, scholars, and civil society, the new *Mudawwanah al-Usrah* replaced patriarchal guardianship norms with a more egalitarian framework. Articles 24 and 25 of the reformed family code grant adult women the legal right to contract marriage without requiring guardian approval. While the symbolic role of *wali* is preserved as an option, it is no longer binding or legally enforceable. The law affirms that a woman who has reached the age of legal majority is fully competent to exercise her marital rights independently (Fadilah, 2024).

This transformation reflects a strategic use of *maqasid al-shari'ah* to reinterpret Islamic law in light of social justice. Rather than framing the reform as a break from tradition, Moroccan lawmakers emphasized the continuity of Islamic values such as *hifz al-nafs* (protection of self), *hifz al-'ird* (protection of honor), and *hifz al-nasl* (preservation of lineage). By prioritizing these *maqasid*, the *Mudawwanah* reoriented the role of the state from a patriarchal enforcer to a protector of individual rights, especially for women. The reform was accompanied by widespread public education and legal training initiatives to ensure that judges, clerics, and administrative officials internalized the new legal ethos (Jouirou, 2024).

The use of *maqasid* in this reform aligns closely with the theoretical contributions of Jasser Auda. His systems-based *maqasid* approach breaks away from rigid hierarchies of legal objectives and introduces flexibility through six interrelated dimensions: purpose (*ghayah*), system, cognition, time, values, and networks (Wardani & Hidayah, 2022). In Morocco's case, these dimensions are evident in both the content and method of reform. The purpose dimension is fulfilled by repositioning family law as a means of achieving dignity and justice. The system dimension emerges in how the reform affects various legal institutions including the judiciary, civil registry, and religious bodies that collectively support the implementation of egalitarian marriage law (Auda, 2008).

The time and cognition dimensions are expressed through the adaptive reinterpretation of Maliki texts in response to current socio-political

realities. Rather than adhering to medieval commentaries Moroccan scholars engaged in *ijtihad* to reinterpret classical sources in ways that address modern harms such as forced marriage, psychological abuse, and social marginalization of women. The value dimension is central as the reform is grounded in Islamic ethical imperatives of *'adl* (justice), *rahmah* (compassion), and *karamah* (human dignity). Lastly, the network dimension is embodied in the participatory nature of the reform process which involved diverse stakeholders: religious scholars, civil society organizations, women's rights activists, and policymakers (Chakim & Putra, 2022).

The reform also introduced institutional safeguards to ensure that women's rights are not merely theoretical but actionable. Family court judges, for example, are required to verify the voluntariness and maturity of women who choose to marry without a guardian. This judicial oversight balances freedom with protection, ensuring that *maqasid* is preserved even within an expanded autonomy framework. In addition, the *Mudawwanah* mandates legal aid services, alternative dispute resolution mechanisms, and capacity-building programs for legal actors to facilitate equitable implementation (Nurhidayah, 2024).

Critics of the reform, particularly from conservative circles, argue that it departs from Islamic orthodoxy and weakens family cohesion. However, proponents contend that the reform is an expression of *tajdid* (renewal) and not *ibtida'* (innovation without precedent), as it remains grounded in the Hanafi opinion and supported by *maslahah mursalah* (unrestricted public interest) (Wadud, 1999). Islamic feminist scholars argue that the reform actualizes the Qur'anic vision of marriage as a partnership based on *sakinah*, *mawaddah*, and *rahmah*, rather than control and subordination (Smith et al., 2008).

From the perspective of Islamic legal communication, Morocco's reform exemplifies a horizontal and participatory model. Law is not only made and imposed by the state but is also produced through dialogue among scholars, activists, and community stakeholders. The state actively disseminated the values of the new *Mudawwanah* through media campaigns, educational materials, and training seminars. This approach contrasts with Indonesia's more vertical, court-centered model, where public awareness and community involvement are relatively limited (Trigiyatno et al., 2022).

Furthermore, the Moroccan experience shows that *maqasid* is not confined to the courtroom but can serve as the foundation for legislative design. The integration of *maqasid* into lawmaking rather than merely judicial reasoning ensures broader and more consistent protection of rights.

This approach is proactive rather than reactive and systemic rather than episodic. While Indonesia responds to violations case by case, Morocco builds safeguards into the law itself and minimizes the likelihood of rights violations from the outset (Fauziah, 2018).

In practical terms, Morocco's experience offers valuable lessons for other Muslim countries. It demonstrates that Islamic law can be both authentic and progressive, capable of transforming family law while preserving its spiritual and ethical core. The success of the *Mudawwanah al-Usrah* lies not only in its legal content but in the process of reform, which reflects a high degree of maqasid-aligned methodology, political will, and public engagement.

Nevertheless, challenges remain. Critics warn of the risk of hyper-individualism and potential misuse of legal freedoms, particularly among urban youth disconnected from traditional values. There are also disparities in how courts across Morocco interpret and apply the law, especially in rural areas where patriarchal norms remain strong. These challenges indicate that law alone is insufficient; continuous education, institutional reform, and community dialogue are needed to fully realize the maqasid-oriented vision of justice and dignity for all citizens.

In conclusion, the Moroccan reform of guardianship law in marriage presents a methodologically robust and maqasid-based model for Islamic legal transformation. It shows how Islamic law can evolve through participatory legislation that centers the objectives of justice, dignity, and public interest. By applying Jasser Auda's systemic maqasid framework, Morocco has created not only a new legal structure but also a new legal culture, one that reimagines the role of wali not as a gatekeeper but as an optional advisor and empowering women while remaining within the moral framework of Islam.

Comparison of Legal and Maqasid al-Shari'ah Approaches to Wali Adhal in Indonesia and Morocco

The comparative study of wali adhal in Indonesia and Morocco reveals two distinct models of Islamic legal adaptation in modern nation-states (Mahfudhi, 2022). While both countries are Muslim-majority and incorporate Islamic law into their family law systems, they diverge in legal sources, institutional structures, reform strategies, and engagement with maqasid al-shari'ah. Indonesia follows a conservative but adaptive approach grounded in judicial discretion, while Morocco has enacted a more progressive and systemic legislative reform rooted in gender justice and public interest.

From a legal perspective, Indonesia retains the classical view that a wali is a legal requisite (rukun) for a valid marriage, as codified in Articles 20–24 of the Compilation of Islamic Law (KHI). This reflects the influence of the Shafi'i school, which considers the presence of a male guardian essential in safeguarding the integrity of marriage (Tsalitsah, 2020). However, when a wali refuses unjustifiably, the state allows judicial substitution through the appointment of a wali hakim. This solution operates within the existing framework and responds to the problem reactively only when the woman files a legal petition (Fatimah, 2021).

In contrast, Morocco adopts a proactive legislative approach that minimizes the authority of the wali altogether. Articles 24 and 25 of the Mudawwanah al-Usrah affirm the autonomy of adult women to contract marriage independently, aligning more closely with the Hanafi school and international human rights frameworks. Here, the wali remains symbolic rather than mandatory, and the law institutionalizes women's agency as the norm, not the exception (Fadilah, 2024). This legal shift reframes marriage as a mutual agreement between two adults rather than a patriarchal transaction supervised by male authority.

Institutionally, Indonesia depends on the judicial apparatus, particularly religious courts, to mediate wali adhal cases. The outcome often depends on the judge's interpretation, the availability of legal aid, and the courage of the woman to pursue her rights. This leads to variation across regions, with some judges being more textualist while others apply maqasid-based reasoning (Wahid et al., 2021). Morocco, by contrast, implements a legislative-institutional model where the law itself eliminates the problem at its root. The family court's role is limited to procedural oversight, such as verifying consent and psychological readiness. This model reduces dependence on judicial interpretation and promotes legal certainty and uniformity (Nurhidayah, 2024).

In terms of maqasid al-shari'ah, both countries invoke this framework but differ in application. In Indonesia, maqasid is primarily used as a judicial justification. Judges invoke *hifz al-'ird* (protection of honor), *hifz al-nafs* (life and dignity), and *jalb al-masalih* (promotion of benefit) when appointing a wali hakim. However, the use of maqasid remains ad hoc, case-specific, and heavily dependent on individual judicial discretion. Morocco, by contrast, embeds maqasid into legislation itself. The reform is guided by maqasid values such as justice (*'adl*), dignity (*karamah*), and public welfare (*maslahah 'ammah*), and aims to structurally eliminate practices that undermine these values, such as forced marriage and guardian abuse (Chakim & Putra, 2022).

Jasser Auda's framework helps explain the difference in depth. Indonesia applies maqasid micro-systemically within the court decision-making process, focusing on individual cases. Morocco adopts a macro-systemic approach, designing an entire legal structure around maqasid principles. Using Auda's six dimensions: Indonesia engages mainly with the purpose (justice) and value (dignity) dimensions in verdicts, while Morocco touches all six: *ghayah* (purpose), *nizham* (system), *zaman* (time), *qimah* (values), *ma'rifah* (knowledge/cognition), and *shabakah* (network) (Auda, 2008). This makes Morocco's model more comprehensive and transformative.

Sociologically, Indonesia and Morocco also face different challenges. In Indonesia, patriarchal culture is deeply embedded in both rural and urban contexts. Even when the law allows a Guardian Judge, many women hesitate to seek it due to familial pressure, social stigma, and lack of awareness. This results in either marriage delay or extralegal arrangements. Conversely, Morocco's primary challenge is not patriarchal resistance but the overextension of individual freedom. Critics fear that removing guardianship may lead to premature or unstable marriages, particularly among youth unfamiliar with traditional constraints (Mahfudhi, 2022).

The communication of Islamic legal values also differs sharply. Indonesia operates through a vertical legal communication model where courts act as intermediaries of state-sanctioned Islamic norms. However, this communication often lacks reach beyond courtroom proceedings. Many citizens, particularly women in peripheral regions, are unaware of their rights or the mechanisms available to address *wali adhal*. Legal decisions are rarely disseminated publicly, and religious institutions are not always aligned with court interpretations (Barlas, 2002).

In contrast, Morocco adopts a horizontal, participatory communication strategy. During the reform of *Mudawwanah*, the state actively engaged the public through campaigns, media outreach, and education, ensuring that the message of gender-equitable Islamic law was clearly transmitted (Basarudin & Mukhlas, 2024). The legal reform became a national discourse involving scholars, activists, and religious leaders. This dialogical approach aligns closely with Auda's emphasis on network and knowledge dimensions in maqasid application. Islamic legal norms in Morocco are not only redefined from the top but also co-produced from the ground up (Tohari, 2017).

In summary, the comparative table below illustrates the core contrasts between the two

Table 1. Comparison of Wali Adhal in Indonesia and Morocco

| Aspects | Indonesia | Morocco |
|-------------------------|--|---|
| Legal Basis | KHI Pasal 20–24 | Mudawwanah al-Usrah Chapters 24–25 |
| Mazhab Dominan | Shafi'i (obligatory wali) | Hanafi (optional guardian) |
| Guardian Status | The Pillars of Marriage | Symbolic, not mandatory |
| The Guardian of Adhal | Guardian of the Judiciary by the Religious Court | Irrelevant, women have freedom |
| The Role of the Court | Reactive (specific cases) | Proactive (from the start) |
| Women's Protection | Formal legal mechanisms | Progressive judicial oversight |
| Functions of the State | Protector of women's rights from wali adhal | Guarantor of the balance of rights and responsibilities |
| Maqasid Dominan | <i>Ḍaruriyyah: hifdz al-'ird, hifdz al-nasl</i> | <i>Hajiyyah</i> and <i>tahsiniyyah</i> : reducing social barriers |
| Sociological Challenges | Patriarchal culture and guardian authority | Risk of abuse of freedom |
| Legal Flexibility | Conservative, sue through the courts | Progressive, accommodating to women's autonomy |
| The Roots of Reform | State codification (Inpres) | Civil society pressure & the king's political vision |

As shown in the table above, Indonesia and Morocco adopt contrasting yet complementary models of Islamic legal adaptation. Indonesia's reliance on judicial discretion reflects a case-based interpretive maqasid application, while Morocco's legislative approach institutionalizes maqasid at a systemic level, emphasizing consistency, freedom, and proactive protection of women's rights (Armi et al., 2025).

The views of fiqh scholars on marriage guardians are an important basis in distinguishing the approach to family law between Indonesia and

Morocco. The Shafi'i, Maliki, and Hanbali schools, which are the main references for Islamic law in Indonesia, require the presence of a guardian in the marriage contract, both for girls and widows. Imam Nawawi emphasized in *al-Majmu'* that marriage without a guardian is invalid because a guardian is the pillar of marriage (Arifandi, 2024).

On the other hand, the Hanafi madhhab allows adult women to marry without a guardian, as long as the conditions of *kafa'ah* and dowry are met. Abu Hanifah equates the rights of girls, widows, and widows in determining marriage. This view is supported by Hamka, who in *Tafsir al-Azhar* interprets Q.S. Al-Baqarah 232 as the legitimacy of women's right to choose a partner (Hamka, 2020).

However, Imam At-Thabari still supports the opinion of the *jumhur*. Thabari understands the verse in the historical context of the case of Ma'qil bin Yasar, and asserts that the role of the guardian remains relevant, even though it is limited by the principle of justice for women (Hidayati et al., 2021). This difference in *ijtihad* reflects the epistemological basis for the different constructions of the law of guardianship in marriage in Indonesia and Morocco.

Although the two countries adopt different approaches, both utilize *maqasid al-shari'ah* as a normative framework. In Indonesia, *maqasid* functions primarily as a tool of interpretation in judicial decision-making. In Morocco, *maqasid* serves as the foundational principle for comprehensive and structured legislative reform (Nurhidayah, 2024).

However, this divergence also generates a conceptual and practical dilemma. Indonesia's judge-driven, discretionary approach risks creating regional disparities in implementation and delays in access to justice (Nasiri, 2024). Meanwhile, Morocco's reliance on progressive legislation faces challenges in maintaining social stability, particularly amid concerns of excessive liberalization (Awaliya, 2020). This highlights the critical importance of evaluating the effectiveness of *maqasid*: can its principles be sustained within differing institutional contexts, and to what extent can *maqasid* balance freedom with social control?

From Jasser Auda's methodological perspective, *maqasid* should be understood as systemic, open, and context-sensitive. Auda proposes six dimensions of *maqasid*: values, cognition, purpose, systems, networks, and time. Morocco's approach appears more aligned with this model, treating *maqasid* as a systemic legislative principle. In contrast, Indonesia still employs *maqasid* as a micro-level argumentative tool within the judiciary. Indonesia's approach tends to be reactive and interpretive, while Morocco's is design-based and legislative in orientation.

From the standpoint of Islamic legal communication, Indonesia adopts a vertical model in which courts are positioned as the central authority in interpreting Islamic norms. Morocco, on the other hand, adopts a horizontal and participatory model that involves broader societal engagement in the lawmaking process. This indicates that maqasid is shaped not only by textual sources and juristic intent, but also by institutional structures and the legal-political framework of the state.

In conclusion, Indonesia and Morocco exemplify two models of contemporary ijtiḥad that demonstrate the flexibility of Islamic law. Indonesia maintains the classical requirement of guardianship (wali) but offers a judicial solution in cases of obstruction. Morocco undertakes structural reform by removing women's legal dependence on guardians. Both illustrate that Islamic law is adaptive, as long as it remains grounded in the objectives of maqasid al-shari'ah, ensuring substantive justice in the context of modern society.

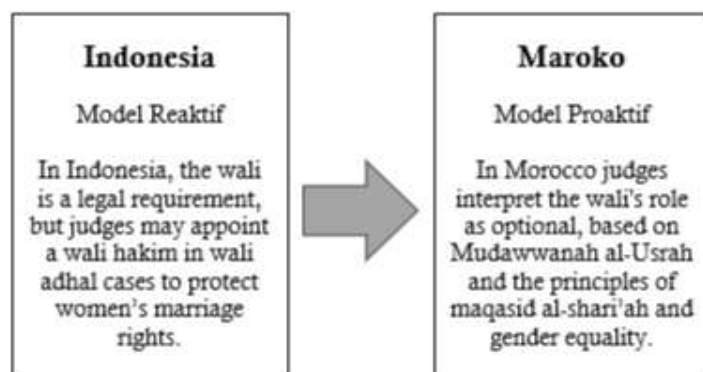


Figure 2. Research Results Diagram

Conclusion

This research contributes to enriching the study of Islamic legal communication by placing maqasid al-shari'ah as an evaluative approach to the practice of determining wali adhal in Indonesia and Morocco. Conceptually, this study closes the academic gap by offering an integrative perspective between juridical-comparative approaches and Islamic legal communication in explaining how the state conveys the messages of Sharia through its policies and legal institutions.

The main findings suggest that the maqasid al-shari'ah approach can be implemented adaptively in two different institutional forms. In Indonesia, maqasid is present in judicial practice in the form of the appointment of guardian judges by religious courts in response to the case

of a guardian ad litem. Meanwhile, Morocco has introduced a more progressive form of maqasid-based legislative reform by recognizing the right of adult women to marry without a guardian. These two approaches differently express the principles of *hifdz al-'ird* and *hifdz al-nasl* in the context of women's protection and family order.

The main novelty of this study lies in the application of the Islamic legal communication approach to read the interaction between sharia texts, institutional structures, and community practices. By combining classical (al-Syatibi) and systemic (Jasser Auda) maqasid, this study shows that the message of Islamic law is not only conveyed through texts, but also through political, legal, and social systems that reconstruct the meaning of sharia justice in the context of the modern state (Kurniawan & Hudafi, 2021).

However, this study has limitations because it only uses one court case study in Indonesia and a legal document study in Morocco. These limitations can affect the generalization of findings and leave interpretive biases that need to be criticized. In addition, the involvement of legal actors in data collection is still limited, so their perspectives have not been fully depicted.

Therefore, follow-up research is recommended to use a *mixed methods approach* that combines comparative case studies with surveys or interviews with judges, religious leaders, and women activists. Interdisciplinary approaches involving gender studies, legal sociology, and political science are also important to understand more deeply the dynamics of maqasid in contemporary Islamic family law reform.

Practically, the results of this study provide a basis for the formulation of judicial guidelines based on maqasid al-shari'ah, especially in handling the case of wali adhal in religious courts. The state and judicial institutions are expected not only to carry out the law procedurally, but also to consider the value of contextual substantive justice. Thus, maqasid is not just a normative rhetoric but an ethical and strategic paradigm in reorganizing the family law system that is responsive to women's needs and social justice in modern Muslim society.

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